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DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 008-2015]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (DOJ or Department) amends its Privacy Act regulations for the system of records entitled “Giglio Information System, JUSTICE/DOJ-017.” Information in this system of records has been established to enable DOJ investigative agencies to collect and maintain records of potential impeachment information and to disclose such information to DOJ prosecuting offices in order to ensure that prosecutors receive sufficient information to meet their obligations under Giglio v. United States, 405 U.S. 150 (1972), as well as to enable DOJ prosecuting offices to maintain records of potential impeachment information obtained from DOJ investigative agencies, other federal agencies, and state, and local agencies and to disclose such information in accordance with the Giglio decision.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tricia Francis, Executive Office for United States Attorneys, FOIA/Privacy Staff, 600 E Street NW., Suite 7300, Washington,

DC 20530, or by facsimile (202) 252-6047.

SUPPLEMENTARY INFORMATION: The Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** at 80 FR 15951, Mar. 26, 2015. The Department invited public comment on the NPRM and the accompanying system notice (SORN). The comment period closed on April 27, 2015 for both the NPRM and the SORN. The Department received two comments from members of the public regarding this system's exemption from the access provisions of the Privacy Act. The Department adjudicated the comments. Both comments supported the approval of the regulation.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940-2008, 28 CFR part 16 is amended as follows:

PART 16--[AMENDED]

1. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E – Exemption of Records Systems Under the Privacy Act

§16.81 –[AMENDED]

2. Amend §16.81 by removing and reserving paragraphs (g) and (h).
3. Add § 16.136 to subpart E to read as follows:

§ 16.136 Exemption of the Department of Justice, Giglio Information System, Justice/DOJ-017.

(a) The Department of Justice, Giglio Information Files (JUSTICE/DOJ-017) system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g) of the Privacy Act. These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) From subsection (d) because access to the records contained in this system may interfere with or impede an ongoing investigation as it may be related to allegations against an agent or witness who is currently being investigated. Further, other records that are derivative of the subject's employing agency files may be accessed through the employing agency's files.

(4) From subsection (e)(1) because it may not be possible to determine in advance if potential impeachment records collected and maintained in order to sufficiently meet the Department's Giglio requirements and obligations are all relevant and necessary. In order to ensure that the Department's prosecutors and investigative agencies receive sufficient information to meet their obligations under Giglio, it is appropriate to maintain potential impeachment information in accordance with Department policy as such records

could later be relevant and necessary in a different case in which the same witness or affiant subsequently testifies.

(5) From subsection (e)(2) because collecting information directly from the subject individual could serve notice that the individual is the subject of investigation and because of the nature of the records in this system, which are used to impeach or demonstrate bias of a witness, requires that the information be collected from others.

(6) From subsection (e)(3) because federal law enforcement officers receive notice from their supervisors and prosecuting attorneys that impeachment information may be used at trial. Law enforcement officers are also given notice by the Giglio decision itself.

(7) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access and amendment provisions of subsection (d).

(8) From subsection (e)(5) because it may not be possible to determine in advance if all potential impeachment records collected and maintained in order to sufficiently meet the Department's Giglio requirements and obligations are all accurate, relevant, timely, and complete at the time of collection. Although the Department has policies in place to verify the records, the records may be originated from another agency, third party, or open source media and it may be impossible to ensure the accuracy, relevance, timeliness, and completeness of potential impeachment information maintained prior to and during the process of being verified.

(9) From subsection (e)(8) because the nature of the Giglio discovery process renders notice of compliance with the compulsory discovery process impractical.

(10) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: June 4, 2015.

Erika Brown Lee,
Chief Privacy and Civil Liberties Officer
United States Department of Justice

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